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VIA FEDERAL EXPRESS

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Re: FCC 96-93 In the Matter of Federal-State Joint Board on Universal Service Reply
Comments of the Minnesota Independent Coalition

Dear Secretary:

DOCKET FILE COPY ORIGINAL

Enclosed for filing are an original and six (6) copies of the Reply Comments Of The Minnesota Independent Coalition In The Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45. One copy has also been sent to the Commission's copy contractor, International Transcription Service, Room 640, 1990 M Street, N.W., Washington, D.C. 20036. In addition, a copy of the enclosed filing has been submitted on diskette to Ernestine Creach, Common Carrier Bureau, Accounting and Audits Division, 2000 L Street, N.W., Suite 257, Washington, D.C. 20554. Also enclosed is our affidavit of service.

If you should have any questions regarding the enclosures or other issues with respect to the filing submitted on behalf of the Minnesota Independent Coalition please feel free to contact the undersigned.

Very truly yours,

MOSS & BARNETT,
A Professional Association



Richard J. Johnson
Brian T. Grogan

cc: All parties of record (with enclosure)

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Enclosures

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

RECEIVED
FEDERAL COMMUNICATIONS COMMISSION
MAY 7 1996

In the Matter of)
Federal-State Joint Board on)
Universal Service)

CC Docket No. 96-45

**REPLY COMMENTS OF THE MINNESOTA
INDEPENDENT COALITION**

Minnesota Independent Coalition

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Date: May 7, 1996

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SUMMARY

The Telecommunications Act of 1996 (the “Act”) provides to the Commission and Joint Board clear direction concerning the priority of Congress’ Universal Service goals. In areas served by large Local Exchange Companies (“LECs”), the Act assumes competition between multiple recipients of universal service support. In areas served by Rural LECs, the Act: 1) does not assume multiple recipients of universal service support; and 2) allows the States to require any competitor for local telephone exchange or exchange access service to become an “eligible telecommunications carrier” as a precondition of providing competitive local service.

This distinctly different balance of policy goals and considerations allows the Commission and Joint Board to adopt different mechanisms and different timetables in establishing the new universal service support mechanisms in areas served by large LECs and Rural LECs. Clearly, the same mechanisms that may be appropriate for large LECs are not necessarily appropriate for Rural LECs. As the initial comments make clear, the Benchmark Cost Model (“BCM”) that has been introduced for consideration is far too inaccurate to be applied to all Rural LECs, whatever its merit for use with large LECs. Rural LECs are far too vulnerable to the inevitable inaccuracies of the BCM.

The Act also sets the criteria for measurement of success of the universal service goals of the Act. Low income consumers are to be provided affordable service and rates are required to be “reasonably comparable” in urban and rural areas for “similar services.” These criteria are focused on actual results measured from the consumers’ perspective. Since rates for universal services must recover the embedded costs of providing those services, the financial support needed to provide those services should be

based on actual costs unless and until another system is demonstrated to provide essentially the same level of support. It would violate the Act to provide only partial federal support of universal services, leaving to the States the responsibility to cover any short fall.

In combination, these factors demonstrate that the Commission and the Joint Board should build upon the actual cost universal service support model now in place for the Rural LECs and should not adopt the BCM for Rural LECs. The current system can be readily modified to achieve all objectives of the Act, and the risks inherent in any radical change are too high, given the importance of universal service under the Act.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
Federal-State Joint Board on
Universal Service

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CC Docket No. 96-45

**REPLY COMMENTS OF THE MINNESOTA
INDEPENDENT COALITION**

The following Reply Comments are submitted by the Minnesota Independent Coalition, an unincorporated association of over 80 small “Rural Telephone Companies” (“Rural LECs”), within the meaning of 47 U.S.C. § 153(47). These Reply Comments will focus on issues raised in some of the Initial Comments of other parties that are of particular significance to the Minnesota Independent Coalition and the ability of its member Rural LECs to continue to provide quality telecommunications service in high cost areas of rural Minnesota. As further discussed below, it is essential for the Commission to implement the Telecommunications Act of 1996 (the “Act”) in a way that does not violate the universal service obligations of the Act for areas served by Rural LECs. Fortunately, the Commission has the discretion under the Act to adopt different mechanisms for LECs and for Rural LECs. For the reasons set forth below, the Commission should proceed moderately, making evolutionary changes to the current universal service support system for Rural LECs that will comply with the requirements of the Act. The

Commission should reject (for Rural LECs) the sweeping changes that are geared to accomplishment of procompetitive objectives in areas served by large LECs.

I. DISRUPTIVE CHANGES TO CURRENT UNIVERSAL SERVICE SUPPORT MECHANISMS FOR RURAL TELEPHONE COMPANIES WOULD BE INCONSISTENT WITH THE ACT.

The universal service goals of the Act include both the availability of affordable service for low income consumers and the comparability of rates and services between urban and rural areas.¹

Determination of comparability requires that the calling scopes of the Rural LECs be compared to the calling scopes of urban areas, and that the basic local rates thought to be comparable be set with the greater use of short haul toll in mind. Untested new models that may lead to radical reductions in universal service support levels to Rural LECs are unnecessary and would violate the requirements of the Act.

1. The Act Focuses on Actual Results And Requires Both Affordability for Low Income Consumers and Comparability of Services and Rates In High Cost Areas.

Some commenters advise the Commission and Joint Board to adopt a theoretical approach that focuses on protections for low income consumers.² The Commission and Joint Board have also been urged to minimize their concern for “comparability” of urban and rural rates and services.³ MFS Communications Company, Inc., for example, states that “[u]niversal service support should . . . be independent of the incumbent firm’s costs and revenues,⁴ while MCI argues for a new universal service mechanism, the Benchmark Cost Model (“BCM”) under

¹ Section 254(b)(3).

² See MCI Comments at p. 6.

³ See MFS Communications Company, Inc. Comments at p. 13, 15; MCI Comments at p. 19.

⁴ Id. MFS Comments at p. 8.

which “existing support flows would be removed from LEC rates.”⁵ Contrary to the theoretical approach reflected in the BCM, Congress has focused on the actual results (impacts on customers) and clearly intends to protect both “low income consumers and those in rural, insular, and high cost areas.”⁶ Specifically, Section 254(b) requires in pertinent part:

(3) ACCESS IN RURAL AND HIGH COST AREAS- Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

(emphasis added)

The theoretical focus of the BCM is inconsistent with the results based focus of the Act to preserve and advance universal service. An approach that would focus solely on low income consumers would violate the universal service requirements expressly set forth in the Act to ensure consumers in high cost areas have access to telecommunications and information services that are “reasonably comparable” to those in urban areas at rates that are also “reasonably comparable” to those charged in urban areas.⁷

2. Comparability Of Rates Must Include Consideration of Calling Scope and The Reliance of Rural Customers on Short Haul Toll.

In determining the comparability of rates between rural and urban areas, it is essential that the Commission and Joint Board recognize that rural areas typically have far more limited

⁵ MCI Comments at p. 6.

⁶ Section 254 (b) (3).

⁷ Section 254 (b) (3).

calling scopes than urban areas and that the basic local rates paid by rural customers do not provide the same scope of local calling service. The result is that rate comparability will be likely only where the basic local rates are lower in rural areas by an amount sufficient to offset the greater use of short haul toll that is needed to provide “similar” calling service that is included in the basic local rate in urban areas. This fact was recognized by a number of commenters, including Frontier Corporation, which recommended a benchmark price of 75% of the neighboring large LEC with a comparable calling area, the Maine Public Utilities Commission et al, the Alabama Public Utilities Commission, the Rural Coalition, and the American Association of Retired Persons.

In contrast some commenters ignored the importance of calling scopes in recommending support levels. For instance, USWC recommended a \$30.00 per month support level, with only Census Block Group areas (“CBGs”) over that cost level to receive support. However, the monthly bills incurred by consumers in CBGs with limited calling scopes would clearly exceed the benchmark support levels by a far greater margin than consumers in urban CBGs because of the need to supplement limited rural calling scopes with more extensive use of short haul toll.

Similarly, AT&T recommends setting the support rate based on the local rates of all “Tier 1” LECs. To the extent that the different local calling scopes of Rural LECs and Tier 1 LECs are not considered, the actual result will be that the rates paid by the customers of Rural LECs would be significantly higher for access to a comparable local calling scope.

Contrary to the comments that ignore the local calling scope, the Act clearly indicates that comparability of services is a relevant consideration and that interexchange services are within the scope of consideration. Subsection 254(b)(3) reads in part:

Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services ... that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

(emphasis added) Clearly, the Act intends that interexchange services be considered in determining comparability. Just as clearly, “similarity” must be determined by reference to the substance of the service provided, not by reference to the description or name given to the service. Consideration of the dramatic differences in the local calling scopes of urban and rural areas and an adjustment for the greater use of short haul toll service in rural areas is thus essential to achieve the fundamental goals of the Act which focus on actual impacts on customers in preservation of universal service.

3. Radical Reductions In Universal Support Funding Pose An Unacceptable Risk Of Local Rate Increases In High Cost Areas, Contrary To The Act.

A number of commenters recommend the adoption of various benchmark or other cost models, based upon the development of a theoretical cost for providing service to high cost areas. The advantages cited by the commenters focus on the pro-competitive aspects of such models and on the probable reduction in overall cost of support mechanisms that would result. MFS, for example, endorsed a somewhat modified version of the “proxy cost model” described by the Commission in its Notice,⁸ while MCI proposes a completely new BCM approach which would entirely replace the current system of support flows.⁹ Likewise, AT&T proposes that the primary focus of this proceeding be the reduction of access charges to TSLRIC, with the difference

⁸ Id.

⁹ MCI Comments at pp. 2-7.

between the affordable rate and the LECs TSLRIC of local service also being used to determine the necessary level of universal service support.¹⁰ AT&T also supports the use of proxy models such as the BCM.¹¹

The focus of these theoretical models are in conflict with the universal service priorities of the Act. The Act focuses on “outputs” in the form of actual impacts on consumers. In contrast, the focus of these commenters and the BCM is on “inputs” to the model and the promotion of economic efficiency and competition. While a number of commenters support the BCM, no parties were able to demonstrate that the impacts of the BCM on Rural LECs and their customers would not be severe. Indeed, the comments of SWBT strongly indicate that the BCM would lead to dramatic swings in the costs calculated as compared to the embedded costs that now provide the basis for universal service support. The risk of sudden, severe impacts on customers of Rural LECs is inconsistent with the intent of the Act to preserve “reasonably comparable” rates for “similar services” between rural and urban areas.

II. IT IS NOT NECESSARY FOR THE COMMISSION TO IMPLEMENT AN UNTESTED THEORETICAL MODEL FOR AREAS SERVED BY RURAL TELEPHONE COMPANIES.

The Commission and Joint Board are not required to implement a “one size fits all” solution to the universal service support issue. Quantification of impacts are a necessary precondition to the implementation of any new universal service support mechanisms, particularly in the context of Rural LECs. Given the uncertainties inherent in the adoption of new universal service support mechanisms, the Commission and Joint Board should proceed

¹⁰ AT&T Comments at pp. 4-7.

¹¹ AT&T Comments at p. 14.

cautiously before adopting untested theories that may lead to unpredictable outcomes and should not shift to the states the burdens of resolving the unknown results of adopting a new cost model.

1. The Act Recognizes That Different Approaches And Priorities Are Needed For Areas Served By Rural Telephone Companies.

As previously discussed, the Act explicitly focuses upon the impacts on consumers in the establishment of new and extended Universal Service principles. The Act specifically requires that both current and advanced telecommunications services be both available to customers and at rates that are comparable between urban and rural areas.

While the authorization of multiple universal service support recipients is a presumed result in areas served by most LECs, Congress imposed specific preconditions on the introduction of competition among universal service providers in areas served by rural LECs. Section 253 of the Act generally prohibits States from enacting regulations which have the effect of prohibiting the ability of an entity providing telecommunications service. However, an exception is provided for rural markets served by rural LECs. Section 253 (f) provides:

It shall not be a violation of this section for a State to require a telecommunications carrier that seeks to provide telephone exchange service or exchange access in a service area served by a rural telephone company to meet the requirements in section 214(e)(1) for designation as an eligible telecommunications carrier for that area before being permitted to provide such service. This subsection shall not apply--

(1) to a service area served by a rural telephone company that has obtained an exemption, suspension, or modification of section 251(c)(4) that effectively prevents a competitor from meeting the requirements of section 214(e)(1); and

(2) to a provider of commercial mobile services.

Clearly, the Act authorizes conditions on competition in areas served by Rural LECs that are different from the areas served by larger LECs.

The same is true with respect to the certification of additional eligible telecommunications carriers for the receipt of federal universal service support. Section 214 (e) (2) provides:

A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission. Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.

(emphasis added). Subsection 214(e)(2) clearly indicates that the presumption of multiple eligible telecommunications carriers that is present for larger urban areas, is not present for areas served by Rural LECs. Rather, Congress clearly indicated that certain preconditions must be met in findings by state commissions before multiple eligible telecommunications carriers may be authorized in areas served by rural LECs

Such requirements clearly indicate that Congress intended to take extra precautions to avoid the risk of disruption of Universal Service in areas served by Rural LECs. Given the fact that the BCM is untested as applied to Rural LECs and given the numerous difficulties relating to that model, the Commission and Joint Board should not commit to application of this model to areas served by Rural LECs until the impacts of that model are far better understood.

Section 254(e) of the Act requires that the new Universal Service mechanism be “explicit” and “sufficient”. Section 254(d) requires that the mechanisms be “specific, predictable and sufficient”. Section 254(d) also requires that all telecommunications carriers that provide interstate service “contribute, on an equitable and nondiscriminatory basis” to the mechanisms.

Nothing in the Act requires the Commission to adopt a theoretical cost model for universal service support, and nothing in the Act requires the Commission to abandon the use of actual costs, particularly for areas served by Rural LECs. Rather, to the extent that the use of such a model would cause a precipitous decline in support that may cause the rates in areas served by Rural LECs to increase to levels that are not “reasonably comparable” to urban areas, the use of that model would violate the requirement that the levels of support be “sufficient” no matter how theoretically desirable the model may be.

Further, it is clear that the Act reflects the different standards and requirements that Congress intended to guide pricing in different contexts. As the Commission noted in the NPRM in Docket 96-98 issued April 29, 1996, ¶¶ 53, 85, 125, the Act specifies different pricing criteria for several different services and situations. A number of these criteria suggest that LRIC or TSLRIC are appropriate in those contexts. Those contexts are quite unlike the requirements imposed by Congress for universal service support where the Act requires that a specific result be achieved, that the services remain affordable to low income consumers and that the rates and services in rural areas remain “reasonably comparable” to urban areas. In the face of these criteria, the requirement that the support levels be “sufficient” must be determined from the perspective of impacts on rates paid by consumers, which are based on actual, embedded costs, not the theoretical costs of a new network.

While the use of theoretical costs may be “sufficient” to prevent adverse consequences for consumers served by large LECs, there is no indication that these cost supports will be “sufficient” for Rural LECs. Indeed, as discussed below, the information available suggests that these cost models will be extremely inaccurate for small LECs. For this reason alone, the use of such models would be inappropriate for Rural LECs.

In addition, as previously discussed, the Act reflects a different balance of priorities for areas served by Rural LECs. This different balance of priorities for large LECs and for areas served by Rural LECs, along with the absence of any express requirement that a theoretical cost model be adopted, support the use of different theories in areas served by large and Rural LECs, particularly if the impacts on consumers in areas served by Rural LECs would otherwise be adversely affected. Accordingly, it may be possible for the Commission and Joint Board to proceed with the BCM or other theoretical cost model for large LECs, while reserving its reliance upon actual cost bases for areas served by Rural LECs, making the modifications that may be appropriate to such actual cost models in order to meet the requirements of the Act that universal service funding be made “explicit”.

A number of commenters have recognized that the different balance of priorities between large LEC areas and areas served by Rural LECs would justify the adoption of two different cost models. Such an approach is vastly preferable to the adoption of an untested theory, such as the BCM, which may have unanticipated and adverse consequences for customers of areas served by Rural LECs.

2. Rural LECs Are Far More Vulnerable To Inaccuracies of New Cost Models.

As many comments demonstrate, the application of the BCM may have dramatically different consequences between urban and rural areas and between low cost states and high cost states. In this context, it is appropriate for the Commission and Joint Board to exercise discretion in a pragmatic way, taking gradual, evolutionary steps to move in the desired direction, without incurring revolutionary and unexpected consequences.

In its Comments, NYNEX, while arguing that the BCM is appropriate to target support for large LECs, admits that the BCM “may not accurately portray the costs of a carrier that serves only a limited or smaller area, and this could cause financial harm to small carriers.”¹² Moreover, US West, Inc. states that the BCM approach “is one that would not cover the full costs which LECs experience in providing basic universal service today. These costs . . . reflect investments prudently made in prior years, upon which LECs are entitled to earn full recovery.”¹³

SWBT was highly critical of the inaccuracies of the BCM, based on its review of the results of the model to actual costs. SWBT said in part:

SWBT has analyzed the Benchmark Costing Model (BCM) and is convinced that it does not provide a reasonable comparison to actual costs by study area (company) or by wire center. ...However, before any model can be adopted the validity of that model must be established by testing its hypothesis against known and measurable results. The only appropriate test is the comparison to actual network costs of study areas across the nation ¹⁴

SWBT’s review of the BCM further demonstrated that:

- (1) The BCM calculated loop investment per household is at least 50% different than actual company results for 34% of the LECs (see Attachment 5, p. 4)
- (2) The BCM ARMIS based annual cost calculation is at least 50% different than actual data for 40% of the LEC study areas. (Attachment 5, p. 8)

¹² NYNEX Comments at p. 10.

¹³ US West, Inc. Comments at p. 13.

¹⁴ SWBT Comments at p 14.

(3) The BCM Hatfield based annual cost calculation is at least 50% different than actual data for 29% of the LEC study areas. (Attachment 5, p. 8) ¹⁵

Inaccuracies at this level call into serious question the advisability of using theoretical costs in any context. SWBT also refers to a Joint Submission¹⁶ in which MCI, NYNEX, Sprint and US West all concur that “[t]he BCM does not define the actual cost of any telephone company, nor the embedded costs that a company might experience in providing telephone service today.”¹⁷

To the extent the BCM approach is, however, workable for large LECs, it is wholly inappropriate for Rural LECs serving high cost areas. The impact of the BCM approach on Rural LECs would be devastating and would result in radical shifts in the services available in high cost areas and the rates charged to consumers in those areas.

The Commission and Joint Board could adopt the BCM model for large company areas, while retaining the current actual cost basis for areas served by Rural LECs. Such an approach would allow the evolution to competition to proceed rapidly in areas served by larger telephone companies, while retaining the protections for areas served by Rural LECs that the Act intends. In such a way, the Commission and Joint Board could achieve the pro-competitive goals of the Act, moving quickly in areas where such prompt action is possible, while moving more deliberately in areas where Congress clearly intended a more deliberate approach to be applied.

¹⁵ Id. at p.15.

¹⁶ MCI Communications Inc., NYNEX Corporation, Sprint/United Management Co., and US WEST, Inc., Benchmark Cost Model: Joint Submission, Copyright 1995, CC Docket No. 80-286 (Dec. 1, 1995), at I-2, Item 3.

¹⁷ Id.

3. The Results of Untested New Cost Models That May Lead To Unpredictable Outcomes For Rural Areas Should Not Be Imposed on The States.

Sprint Corporation and several other commenters suggested that the Commission and Joint Board adopt the BCM as a national standard, leaving to the individual states the responsibility to resolve and fund any additional amounts that would be required to preserve actual comparability of rates between urban and rural areas. Similar philosophies have been advocated by MCI, which proposes “state-specific” subsidies leaving it to the state commissions to “determine the distribution” on a “competitively neutral basis,”¹⁸ and MFS which similarly argues that “the Commission and Joint Board should not become mired in trying to determine a national standard for affordable local service prices.”¹⁹

These suggestions are inconsistent with the Act and do not justify the adoption of an untested cost theory which would have the effect of shifting to the States the responsibility to solve the resulting problems. Transferring the responsibility for not only solving the problems but funding the unexpected results of the BCM is inconsistent with the Act. The Act contemplates a cooperative effort between the Commission and the States and does not recognize jurisdictional distinctions between “interstate” and “intrastate” responsibilities for preservation of the federally-authorized group of universal services.

Section 254 (e) provides no indication that the support to be provided by the federal universal support system is intended to cover only a portion of the difference between the cost of the service and the a reasonably comparable price between urban and rural areas. Rather, that section reads in part:

¹⁸ MCI comments at p. 12.

¹⁹ MFS comments at p. 19.

After the date on which Commission regulations implementing this section take effect, only an eligible telecommunications carrier ... shall be eligible to receive specific Federal universal service support. A carrier that receives such support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. Any such support should be explicit and sufficient to achieve the purposes of this section.

(emphasis added). As previously discussed, the purposes of Section 254 include providing “reasonably comparable” rates and services between urban and rural areas. There is no indication that Congress intended the fulfillment of this purpose to be subject to the willingness of individual States to implement supplementary financing arrangements to cover the costs of the services determined by the Commission and Joint Board to be appropriate universal services.

Rather the Act intended the States be responsible only for any “additional” services that they may choose to include. Section 254(f) reads in part:

A State may adopt regulations to provide for additional definitions and standards to preserve and advance universal service within that State only to the extent that such regulations adopt additional specific, predictable, and sufficient mechanisms to support such definitions or standards that do not rely on or burden Federal universal service support mechanisms.

(emphasis added). The Act establishes a cooperative process involving the establishment of a core of services by the Commission and Joint Board that will be supported by the federal universal service funding to the extent necessary to preserve affordability for low income consumers and “reasonably comparable” rates between urban and rural areas. These services clearly include both interstate and intrastate services. The individual State commissions participate by determining which carriers are eligible telecommunications carriers who will receive funding for providing those services. While the Act does provide for the possibility of

additional services to be determined by the States for Universal Service support, only these additional services are subject to individual State funding requirements.

Accordingly, the recommendation that the Commission and Joint Board adopt the theoretical BCM, leaving to the States the burden of achieving and funding “reasonably comparable” actual rates, is inappropriate and inconsistent with the Act. Handing to the individual States the responsibility for funding the unpredictable results of the BCM is not an appropriate or acceptable approach within the meaning and intent of the Act

4. The BCM Should Not Be Adopted For Rural LECs Even If It Is Applied to Large LECs.

Even if the Commission and Joint Board determine that the BCM is appropriate for large LECs, a less revolutionary modification of current universal service support should adopted for Rural LECs. Many commenters acknowledge that the BCM will not cover the full costs of LECs in providing service. Since Rural LECs serve predominately high cost areas, the BCM approach is clearly inappropriate to allow recovery for sound investments which have been made by Rural LECs to deliver comparable services in high cost areas.²⁰ The inappropriateness of the BCM model for “small carriers” was acknowledged by NYNEX, one of the principal sponsors of the BCM model which said in part:

The BCM should only be used to calculate support amounts for price cap LECs. The BCM is sufficiently accurate to target support for large carriers, such as the price cap LECs, who serve wide geographic areas, because any overestimation in some areas will be offset by underestimation in other areas. However, such a model may not accurately portray the costs of a carrier that serves only a limited or a smaller area, and this could cause financial harm to small carriers. For rate of return carriers, which are typically small carriers that serve rural areas, the Commission should use actual study area costs to develop high-cost assistance.”²¹

²⁰ US WEST Comments at p. 13.

²¹ NYNEX comments at pp. 10-11.

NYNEX also noted that such an approach was consistent with the terms of Section 214(e)(5) which provided for the use of a Rural LECs study area until changes by a Joint Board. NECA also notes the particular difficulties posed by a proxy cost model for Rural LECs, saying in part:

Various proposals to identify costs by means of proxy formulas, for example, may work for some larger companies, but should not be applied on a mandatory basis to all companies. As NECA explained in its comments in CC Docket 80-286, the cost of serving rural areas can vary greatly among small company study areas. This variability is not captured by current proxy formulas, and the Commission should therefore not mandate their use for rural companies.²²

Clearly, the requirements to preserve universal service and to obtain accurate results outweigh any benefits of uniformity. Accordingly, the Commission and Joint Board should not require the use of the BCM for Rural LECs.

III. THE COMMISSION AND JOINT BOARD SHOULD PROCEED IN A SERIES OF MEASURED STEPS BEFORE ADOPTING ANY RADICALLY NEW SUPPORT MECHANISMS FOR RURAL TELEPHONE COMPANIES.

The Act requires that the Commission and Joint Board act within 15 months of the date of enactment. The Act does not, however, preclude the Commission and Joint Board from adopting a strategy of taking a series of measured steps and does not require the Commission and Joint Board to accomplish a radical shift within the initial 15 months. Such an approach would be completely inconsistent with the Act, given the vulnerability of Rural LECs to unexpected results of a new model.

²² NECA Comments at p. 6.

1. The Act Does Not Require The Commission And Joint Board To Complete The Transition Within 15 Months.

A review of the comments underscores the difficulty of the task facing the Commission and Joint Board. While the range of recommendations to the Commission and Joint Board are extremely broad, the quantitative information regarding the likely impacts of the new proposals was quite limited. The Act requires the Commission and Joint Board to accomplish certain outputs, the preservation of affordable service for low income individuals and the achievement of comparable availability and prices for services in urban and rural areas. Accordingly, it is essential that the Commission and Joint Board proceed by carefully measured decisions, where the impacts of each decision on affordability for low income consumers and the comparability of urban and rural rates are known with reasonable certainty before the decisions are made.

It is important for the Commission and Joint Board to recognize that the Act does not require the fulfillment of all of the objectives or refinements of the new universal service support mechanisms within the initial 15 months. Rather, the Commission and Joint Board will fulfill the requirements of the Act if they establish a general direction, set a process in motion, and defer further decisions until necessary information is available.

Section 254(a)(2) sets the requirements for this proceeding and reads in part:

The rules established by such proceeding shall include a definition of the services that are supported by Federal universal support mechanisms and a specific timetable for implementation

Clearly, the Act does not require the Commission and Joint Board to complete implementation of the new universal service mechanism in 15 months. This necessarily allows the Commission and Joint Board to proceed in a measured way to implement the new mechanisms over a greater time

period and must include the opportunity to make refinements to their decisions as part of the implementation process.

The necessity for such an approach is underscored by the Commission's recognition that the outcome of its review of Part 69 Access Charges is closely interrelated to the adoption of new Universal Service Support mechanisms. See, NPRM. Docket No. 96-98, ¶¶ 4, 125, 146. Clearly, the review of access charges will not be accomplished within 15 months. Just as clearly, the outcome of that review may result in an increase to the Subscriber Line Charge ("SLC") which may have an adverse impact on both the affordability of services to low income consumers and on the reasonable comparability of urban and rural rates. If so, the outcome of the access charge review may require the Commission and Joint Board to modify any support mechanisms that are adopted in this proceeding.

Accordingly, the Commission and Joint Board should not make a series of independent determinations in this proceeding, which may have the effect of increasing local subscribers charges without knowing the result of the review of Part 69 access charges. In short, any direction established in this proceeding which would have the impact of increasing local customer charges must be made subject to further review pending completion of the Commission's review of Part 69 access charges. To do otherwise would be inconsistent with the intent of the Act that impact on customers be a top priority and that the preservation of Universal Service include comparability of rates between urban and rural areas.

2. The Commission Need Not Attempt To Implement Identical Support Mechanisms for All LECs , Large and Small.

It is significant that the Act recognizes that a different balance of the priorities between the promotion of competition and the preservation of universal service may be appropriate in rural and urban areas. The Act grants to the States considerable discretion in the implementation of this balance. A necessary additional inference from this different balance of universal service and procompetitive policies is that the Act also allows the Commission and Joint Board to implement different mechanisms for the support of universal service in areas served by large LECs and Rural LECs. A review of the Act shows that the Commission and Joint Board can fulfill all requirements of the Act by implementation of different universal support mechanisms for large and Rural LECs. The requirements of Section 254(b)(5) that support mechanisms “should be specific, predictable and sufficient ... to preserve and advance universal service” and of Section 254(e) that the mechanisms be made “explicit and sufficient to achieve the purposes of this section” do not compel either uniformity of mechanisms for large and Rural LECs or a process that moves forward at the same pace for both large and Rural LECs.

3. Any New Universal Service Support System For Rural LECs Should Build Upon The Proven Elements Of The Current System.

Rather than adopting a completely new theoretical approach to support of universal service, the Commission and Joint Board should build upon the success of the current system. As the Rural Coalition, USTA, and NYNEX have recommended, the Commission and Joint Board should continue to base the universal service support mechanisms for Rural LECs on the recovery of embedded costs of Rural LECs. The recovery of embedded costs by Rural LECs is

not inconsistent with any requirement of the Act, which recognizes that different priorities may be needed for rural areas. It is also necessary to achieve the goal of “reasonably comparable” rates, since the embedded facilities will be used to provide the services received by most rural consumers.

Indeed, as noted by NYNEX and USWC, two sponsors of the BCM, the current system based on the recovery of embedded costs of the Rural LECs is not inconsistent with the Act. Further, as noted in the Comments of the Rural Coalition, the USF and DEM weighting features of the current system are “explicit” and can be amended to be recovered from all participants in the telecommunications industry in a competitively neutral manner.²³

The advice provided by several commenters to build upon existing systems for Rural LECs is extremely sound. The Commission and Joint Board should refrain from any commitment to a new, and untested universal service cost model which may have unexpected and severe consequences. NECA summarized the considerations, saying in part:

In these comments, NECA suggests, first, that revised federal universal service programs should build on existing mechanisms. Changes to current rules and procedures should be introduced as necessary to meet the requirements of the 1996 Act, but should not jeopardize current universal service achievements or compromise universal service principles and goals.²⁴

The current universal service support system has been clearly successful in promoting universal service. That success should not be undermined, particularly since the Act extends universal service goals to explicitly include both “reasonable comparability” of service and rates between urban and rural areas and the inclusion of new and advanced telecommunication services. Since the Act charges the Commission and Joint Board with responsibility to succeed

²³ Rural Coalition Comments at p. 19.

²⁴ NECA Comments at p. 4.